SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 566

STEPHEN J. ROTH, ATTORNEY GENERAL, SUCCESSOR TO EUGENE F. BLACK, ATTORNEY GENERAL, IN THE NAME AND ON BEHALF OF THE PEOPLE OF THE STATE OF MICHIGAN,

Appellant,

vs.

PRESTON DELANO, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES OF AMERICA, AND JOSEPH T. CONNOLLY, AS RECEIVER OF THE FIRST NATIONAL BANK-DETROIT, A NATIONAL BANKING ASSOCIATION, AND AS DETROIT REPRESENTATIVE, COMPTROLLER OF THE CURRENCY IN THE UNITED STATES OF AMERICA,

Appellee

MOTION OF APPELLEE TO DISMISS OR AFFIRM

Now comes Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a national banking association, and as Detroit Representative of the Comptroller of the Currency of the United States, appellee herein, by his counsel, and, under Supreme Court Rule 12, section 3, moves this Honorable Court to dismiss with costs the appeal taken

herein to this Court by appellee, or, in the alternative, to affirm the judgment below, for the following reasons:

1. There is no jurisdiction, under the provisions of Title 28, U. S. Code, section 1254(2), for this appeal.

2. There is no substantial federal question presented in this action.

The foregoing reasons are more fully set forth in the statement opposing jurisdiction included herewith.

Statement Opposing Jurisdiction

Appellee, believing that there is no jurisdiction, under the provisions of Title 28, United States Code, section 1254(2) for this appeal, and that there is no substantial question involved here, files this statement opposing jurisdiction on appeal and in support of his motion included herewith.

Statement of the Case

The instant case is but one chapter of a controversy, which has now extended over eleven years, in which it has repeatedly been held that the escheat acts of the State of Michigan do not apply to the liquidation, under the National Bank Act, of the insolvent First National Bank-Detroit, a national banking association. *Starr* v. *O'Connor* (1941), 118 F. 2d 548 [cert. den., 314 U. S. 695]; *Rushton* v. *Schram* (1944), 143 F. 2d 554; *Starr* v. *Schram* (1944), 143 F. 2d 561; *Black* v. *Delano* (1948), 170 F. 2d 966. No one chapter of this controversy can be divorced from the others, and all are referred to in the opinion of the Court of Appeals in the instant case.

In a letter of May 28, 1937, written in response to a letter from the Attorney General of Michigan, the Comptroller of the Currency of the United States advised the

Attorney General of his opinion and position that the escheat acts of Michigan "are not applicable to closed national banks." As a result, on February 14, 1938, the Attorney General filed a declaratory judgment action against the Comptroller of the Currency and the receiver of First National Bank-Detroit, praying for a declaration that the Michigan escheat acts "are applicable to First National Bank-Detroit, a national banking association, now insolvent and in the process of liquidation." On appeal, the Circuit Court of Appeals for the Sixth Circuit held the acts inapplicable, the receivership being "immune" from state control since the National Bank Act provides a complete system for winding up the affairs of an insolvent national bank and distributing its effects. *Starr* v. *O'Connor* (1941), 118 F. 2d 548.

While a petition for rehearing was pending, the Michigan legislature passed a new escheat act, Act 170 of the Public Acts of Michigan for 1941, and it was formally called to the attention of the Court of Appeals. Thereafter, his petition for rehearing was denied, and the Attorney General filed two petitions for certiorari with the United States Supreme Court. These were both denied. *Starr* v. *Schram* (1941), 314 U. S. 695.

On March 14, 1942, a successor Attorney General of Michigan filed another declaratory judgment action, based on the Michigan escheat acts as amended by the new Act 170. The prayer of the petition was identical with that in the first action, except for mention of the new Act 170 therein. From an adverse decision, the Attorney General again appealed. The result is the decision of the Court of Appeals for the Sixth Circuit, reported in *Rushton* v. *Schram* (1944), 143 F. 2d 554, holding the amended law likewise not applicable, and the majority said it did not apply retroactively and that it was not so intended. On the same day, the Court of Appeals handed down another decision in this contro-

versy, *Starr* v. *Schram* (1944), 143 F. 2d 561, which denied the bank receiver the right to recover money erroneously paid by him to the State of Michigan upon its demands under the escheat acts, prior to 1937, and prior to the above cited decision, *Starr* v. *O'Connor, supra.* The immunity of the State to suit, without its consent, was one of the grounds for the decision.

Upon applications filed, the Supreme Court granted extensions of time to apply for certiorari, to the Attorney General in the *Rushton* case and to the receiver in the *Starr* case. In his application, the receiver advised the Supreme Court that, under direction of the Comptroller of the Currency, he was attempting to arrange an agreement to dispose *finally of the entire controversy.* As part of its files and records, the Supreme Court may take judicial notice of these applications and their contents. *United States* v. *California Co-Op. Canneries* (1929), 279 U. S. 553, 555. Certiorari petitions were not thereafter filed, since, as may be deduced from that fact, a settlement agreement was reached, which appellee believes did and does dispose of this entire escheat controversy. The agreement itself is not a part of the record here, since it is a matter of affirmative defense, which, as yet, appellee has not been called upon to make in the instant case.

The liquidation of the insolvent First National Bank-Detroit was completed and the receivership closed as of June 15, 1944, as reported to Congress in the Comptroller of the Currency's eighty-second annual report to Congress (Table 45, p. 169 and note 10), the contents of which federal courts may take judicial notice. *Texas & Pacific Ry. Co.* v. *Pottoroff* (1934), 291 U. S. 245, 254; *Fletcher* v. *Jones* (C. A., D. C., 1939), 105 F. 2d 58, 61 [cert. den., 308 U. S. 555]; *Hardee* v. *Washington Loan & Trust Co.* (C. A., D. C., 1937), 91 F. 2d 314, 315.

On June 25, 1946, *two years after* the completion and final closing of the bank liquidation, this *third* declaratory judgment action was filed. The main prayer of the petition is the same as in the *Rushton* case, except that it speaks of the bank having now been liquidated. *Exactly the same escheat act is involved.* Appellant says it is different because he refers to *dividends* on claims proved but not yet paid. The Court of Appeals found no essential difference. It said it was fought on essentially the identical legal grounds as were the previous cases. *For the third time the Court of Appeals held the state act inapplicable in the circumstances here presented.* Appellant now attempts to appeal under section 1254(2) of Title 28, United States Code.

The Comptroller of the Currency was originally named as a defendant. The action was dismissed as to him because of a lack of jurisdiction over his person. Appellant did not appeal from that dismissal. Hence the Comptroller of the Currency was not and is not a party, and was not before the courts below.

Discussion

1. *State Acts Not Held Invalid*

Since passage of the Jurisdictional Act of 1925, it has been held to be the intent of Congress, through the Judicial Code, to restrict the obligatory appellate jurisdiction of the Supreme Court to a narrow class of cases, and to foreclose an appeal as of right whenever the prescribed conditions have not been rigorously fulfilled. *Memphis Natural Gas Co.* v. *Beeler* (1942), 315 U. S. 649, 651; *Phillips* v. *United States* (1914), 312 U. S. 246, 250.

The Court of Appeals, in its opinion in the instant case, did not hold that the Michigan escheat acts are invalid as repugnant to the provisions of the National Bank Act.

Appellant says the decision "in substance" determines this. An analysis of the proceedings and the decision shows this is not true.

The main prayer of appellant's petition for declaratory judgment asked for a declaration that the Michigan escheat act, as amended by Act 170, "is *applicable* to the First National Bank-Detroit, a national banking association, heretofore declared insolvent and since such insolvency liquidated". (Emphasis ours.) Appellee moved to dismiss the petition as to him because it failed to state a cause of action and because of a lack of jurisdiction in the court over the subject-matter. Contrary to appellant's statement, at no time did appellee say or urge that the Michigan law was invalid.

Appellee's position in both courts has been, in support of his claim that the petition did not state a cause of action against him: (1) That the National Bank Act provides a complete and exclusive system for the winding up of the affairs of an insolvent national bank, hence, the state statutes do not apply in that field. Therefore, since appellant's ground for relief was based on an inapplicable statute, no cause of action was stated. (2) That, in any event, no cause of action was stated against appellee because, as a matter of law, he had no power, authority or duties with regard to the distribution of moneys made from the liquidation of the insolvent national bank. That all such moneys were paid over to the Comptroller of the Currency, whose right and duty it was to make all distribution thereof, and who was not before the court. Title 12, U. S. Code, sections 192, 193, 194; R. S., sections 5234, 5235, 5236, respectively.

In sustaining, on the merits, the District Court's dismissal of appellant's petition for a declaration that the Michigan escheat act "is applicable" to the national bank liquidation, the Court of Appeals merely answered in the negative. It held it was not applicable. In saying, in its

opinion, that the action brought "to apply" the Michigan statute "in the circumstances constitutes an unlawful interference with the liquidation of a national bank", it is saying no more than that the Michigan act does not apply in a manner so as to infringe on rights, duties, privileges or immunities provided under federal law. The Court of Appeals said its holding herein was upon the same principles and authorities discussed in its previous opinions.

In *Rushton* v. *Schram, supra*, the Court of Appeals discussed the application of the *same* act here involved, which does not name national banks or national bank receiverships, and held it did not apply retroactively "to dormant deposits in a national bank in course of liquidation" (p. 557). In none of its four opinions concerning this escheat controversy has the Court of Appeals ever characterized any portion of the Michigan escheat law as invalid legislation. It has never questioned the right and power of the Michigan legislature to enact it. In each opinion it has been concerned only with construction of the law and the extent of its application.

It is well established that an attack, in a state court, upon a state statute on the ground that it infringes upon a party's federal rights, privileges or immunities does not sustain an appeal under former section 237(a) of the Judicial Code [Title 28, U. S. Code, sec. 344(a)—now section 1257(2) thereof], where the decision of the state court upholds the application of the statute. *Charleston Fed. Sav. & L. Assn.* v. *Alderson* (1945), 324 U. S. 182; *Memphis Natural Gas Co.* v. *Beeler*, supra; *Baltimore National Bank* v. *State Tax Commission* (1935), 296 U. S. 538 [from *State Tax Comm.* v. *Balt. Nat. Bk.*, 169 Md. 65, 180 A. 260]. Such an attack does not draw in question the validity of the state statute.

It is equally true that where the issue raised by a party in a federal court is that his rights, privileges, duties or immunities under the Constitution, treaties or laws of the

United States prevent the application of a state statute to him or his property, and the Court of Appeals decision is against the claimed application, no appeal can be taken under section 1254 (2) of Title 28, U. S. Code [formerly sec. 240(b) of the Judicial Code—28 U. S. C., sec. 347(b)]. Again, the validity of the state statute is not drawn in question. *Reeves* v. *Williamson* (1942), 317 U. S. 592; *Gamble* v. *Daniel* (1930), 281 U. S. 705.

In *Reeves* v. *Williamson*, supra, the Supreme Court dismissed an appeal for want of jurisdiction under section 240(b) of the Judicial Code, the appeal being from the decision of the Court of Appeals (6th Cir.) in *Re Kentucky Fuel Gas Co.* (1942), 127 F. 2d 657. This case involved an attempt by the Kentucky Commissioner of Revenue to collect a tax, levied under a state statute, upon funds deposited, under a federal statute, in a United States postal savings depositary by a receiver of a corporation being reorganized under federal law. The question was stated by the Court of Appeals to be "whether or not imposition of the tax constitutes a legitimate exercise of the state taxing power". The Court of Appeals found that the state statute did embrace, by a catchall provision, the postal savings deposits, but held that the tax imposed thereunder could not be collected, "since the tax is plainly discriminatory and substantially burdens an instrumentality of the federal government".

In *Gamble* v. *Daniel*, *supra*, the Supreme Court held it was without jurisdiction, under section 240(b) of the Judicial Code, of the appeal taken from the Court of Appeals (8th Cir.) decision therein, reported (1930) in 39 F. 2d 447. Here a trust company, organized under the Nebraska law, became insolvent, and its books, accounts and property were taken over for liquidation, under State statutes, by the Nebraska Department of Trade and Commerce. Shortly thereafter, the trust company was adjudicated a bankrupt

under Federal law, and a receiver in bankruptcy appointed for it. His demands for the company books, accounts and records were refused by the State, which claimed a right to proceed under State law. In sustaining the Federal court summary turnover order, the Court of Appeals stated that the Constitution gives Congress the power to occupy the entire field of bankruptcy, that the Bankruptcy Act superseded the State law, at least in so far as it relates to the distribution of property, and that "there can be no question of the precedence of the Bankruptcy Act nor of the duty of the federal courts to sustain that act and the jurisdiction, rights and duties thereunder."

In the case at bar, the Court of Appeals did no more than was done in the *Reeves* and *Gamble* cases, even less toward holding invalid a state statute than it did in the *Reeves* case. It merely held that the State act does not apply because the field is occupied by the Federal law—this in answer to appellant's request for a declaration on this issue.

Where, as here, the issue is as to which of two statutes applies, where they provide mutually exclusive procedures or rights, the validity of a statute is not thereby drawn in question. *P. J. Carlin Construction Co.* v. *Heaney* (1936), 298 U. S. 637 [from *Heaney* v. *Carlin Construction Co.* (1935), 269 N. Y. 93, 199 N. E. 16]; *Bradford Electric Light Co.* v. *Clapper* (1931), 284 U. S. 221; *North Dakota* v. *Olson* (1929), 280 U. S. 528 [from 33 F. 2d 848].

The issues decided in the cases cited by appellant as sustaining jurisdiction on this appeal go to the power of the State to enact the statute in question because of Federal constitutional prohibitions against so legislating. In each of those cases a State statute was held invalid. That was not discussed, decided, nor an issue in the case at bar.

2. *Absence of Indispensable Party.*

Under the ground to dismiss appellant's petition for lack of jurisdiction in the court over the subject-matter, appellee raised the question of the Comptroller of the Currency not being before the court.

Under the provisions of the National Bank Act applicable herein, all duties of the bank receiver are performed under the direction and control of the Comptroller, and he must make report of all his acts and proceedings to the Comptroller. The receiver's duties go only to the liquidation of the bank assets, under the direction and control of the Comptroller. All moneys so made must be paid over to the Treasurer of the United States, where they are subject to the order of the Comptroller. All distribution of the moneys so made is a function of the Comptroller *alone*. The receiver has no duties with regard thereto. Title 12, U. S. Code, sections 192 and 194; R.S., sections 5234 and 5236. In fact, Congress has placed on the Comptroller the entire responsibility for the winding up of the affairs of an insolvent national bank. *Ex parte Chetwood* (1896), 165 U. S. 443, 458; *United States* v. *Weitzel* (1918), 246 U. S. 533, 540.

As the party charged with the duty of administering the affairs of the insolvent First National Bank-Detroit, as the *sole* party authorized to make distribution of the proceeds of the liquidation, and hence the only party with complete records thereof, it is the Comptroller's rights and interests that appellant's action herein infringes upon, and no other person's. Obviously, the Comptroller is an indispensable party to the granting of the relief appellant seeks. *Webster* v. *Fall* (1925), 266 U. S. 507; *Gnerich* v. *Rutter* (1924) 265 U. S. 388; *Warner Valley Stock Co.* v. *Smith* (1897), 165 U. S. 28.

Even had appellee not raised the question, the court, *sua sponte*, could and should have inquired into the absence of the indispensable party, and could not grant the prayers of appellant's petition in the Comptroller's absence from the action. *Minnesota* v. *Northern Securities Co.* (1902), 184 U. S. 199, 235; *Drachett Co.* v. *Chamberlain Co.* (1936), 81 F. 2d 866, appeal dismissed and cert. den., 299 U. S. 503-4.

3. *No Substantial Question Involved.*

There can hardly be a substantial Federal question involved in an action which does not include a party absolutely essential to a granting of the relief requested. That is the situation in the case at bar. Further, if the appeal be allowed, all that can be reviewed is the claimed Federal question involved—whether the Michigan statute applies in the circumstances here presented. In the event of a reversal on the Federal question, the case would have to be returned to the lower courts where dismissal would result on the jurisdictional ground, leaving any ruling here but a matter of academic interest. Title 28, U. S. Code, section 1254(2).

Further, only a Michigan statute, not one of general application, is involved in this case, and that statute *has now been superseded by an entirely new escheat code in Michigan, which repeals all previous escheat statutes of the state.* Act 329 of the Public Acts of Michigan for 1947, section 65 (Mich. Sts. Ann., sec. 26.1053(65)). It is true there is a savings clause as to pending suits or proceedings. However, any declaration under a statute in existence only as to pending litigation can scarcely be termed the decision of a substantial question.

4. *Res Adjudicata.*

In reality the prior escheat decisions of the Court of Appeals for the Sixth Circuit are *res adjudicata* as to the instant action. The parties are identical. The prayers in all the actions are identical. As the Court of Appeals said, the "present battle is fought upon essentially the same legal grounds upon which former contests have been waged." Appellant cites *Anderson National Bank* v. *Luckett* (1944), 321 U. S. 233, and *United States* v. *Klein* (1938), 303 U. S. 276. He does not claim these decisions are in conflict with the Court of Appeals decision in the instant case. As a matter of fact, the Court of Appeals considered the *Anderson* case in its last *two* opinions, and the *Klein* case *three* times. It has had no difficulty in distinguishing the holdings in these cases in each instance. These decisions did not deal with insolvent national banks for the liquidation of which Congress has provided a complete code under which the Comptroller of the Currency is charged with the duty of locating creditors, and distributing dividends to the true owners.

It is submitted that there is no substantial question here involved.

5. *Decision Below is Correct.*

That the Court of Appeals is and has been correct in its holding, throughout this controversy, that the Michigan escheat acts are not applicable in the circumstances presented is clear.

It has long been held that the National Bank Act provides a complete system for the winding up of insolvent national banks, including all steps for the distribution of their effects. It covers the field, to the exclusion of other law. *Cook County National Bank* v. *United States* (1883), 107

U. S. 445, 448; *Davis* v. *Elmira Savings Bank* (1896), 161 U. S. 275; *Easton* v. *State of Iowa* (1903), 188 U. S. 220.

Appellant argued below that the Michigan acts only provide for a change in dominion of the obligation to pay ratable dividends. However, Congress has made this a dominion of the Comptroller, and only Congress can change it. Further, if Congress has a constitutional power to regulate a particular subject, and it does regulate it in a certain manner and form, a state legislature may not infringe thereon, by way of complementary legislation or otherwise. What Congress does prescribe indicates that it does not intend there shall be any further legislation to act upon the subject-matter. *Easton* v. *State of Iowa, supra*, at page 237.

An analysis of the Michigan act itself shows that, by its terms, it is not applicable here. It is stated to apply to "each person within this state who or which as a depository is indebted or accountable to any other person for money, credits, securities or property of any kind". Section 6 of Act 170. Section 4b defines depository to include any person "who or which has in his or its possession or under its control any property • • • for which he or it is indebted or accountable to any other person as depositor". The Comptroller is not within Michigan, and the receiver is neither indebted nor accountable to anyone other than the Comptroller. Title 12, U. S. Code, sec. 194; R.S., sec. 5234.

Conclusion

Appellee respectfully submits that there is a want of jurisdiction herein for an appeal under Title 28, U. S. Code, section 1254(2), and respectfully urges that his motion filed herewith be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 24

STEPHEN J. ROTH, Attorney General, Successor to Eugene F. Black, Attorney General, in the name and on behalf of the people of the State of Michigan, Appellant

v.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and JOSEPH T. CONNOLLY, as Receiver of the First National Bank—Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America.

On Appeal From the United States Court of Appeals for the Sixth Circuit.

BRIEF FOR APPELLEE

OPINIONS BELOW.

The district court wrote no opinion. The opinion of the Court of Appeals for the Sixth Circuit (R. 66-68) is reported at 170 F. 2d 966.

JURISDICTION.

The judgment of the court of appeals was entered on November 30, 1948 (R. 66). The petition for appeal was filed and allowed on January 26, 1949 (R. 70, 73). The case was docketed in this Court on February 16, 1949. Jurisdiction was invoked under 28 U.S.C. 1254(2). On March 28, 1949, further consideration of the question of jurisdiction and of the motion to dismiss or affirm was postponed to the hearing of the case on the merits (R. 76).

QUESTIONS PRESENTED.

Relying on its prior decisions in suits brought by the Attorney General of Michigan, seeking a declaration that certain Michigan discovery and escheat laws are applicable to the First National Bank—Detroit, a national bank in liquidation, the Court of Appeals for the Sixth Circuit here affirmed the refusal of the district court to declare such Michigan laws applicable to the liquidated First National Bank—Detroit. The questions presented to this Court are:

1. Whether an appeal lies from the decision of the Sixth Circuit under 28 U.S.C. 1254(2).

2. Whether this Court should pass upon the validity of the application of the Michigan discovery and escheat law to this liquidated national bank. The answer to this question depends, in turn, upon

   a. Whether the Comptroller of the Currency of the United States, as to whom this suit was

dismissed for lack of jurisdiction, no appeal having been taken from the order of dismissal, is an indispensable party to this action.

b. Whether this suit is barred under the doctrine of *res judicata*.

c. Whether this is a suit against the United States to which the United States has not consented.

d. Whether the absence of an authoritative state court decision as to the scope of the Michigan statute should preclude a decision by this Court as to the validity of that statute.

3. If the above questions be answered adversely to our contentions, a further question presented is whether the attempted application to a liquidated national bank of the Michigan discovery and escheat laws constitutes an unconstitutional interference with the Federal Government.

STATUTES INVOLVED.

28 U.S.C. 1254(2) and the pertinent provisions of the National Bank Act and the Michigan statute are set forth in Appendix A, *infra*, pp. 60-67.

STATEMENT.

This action was brought by the Attorney General of the State of Michigan against the Comptroller of the Currency of the United States and Joseph T. Connolly, as receiver of the First National Bank—Detroit, a National Banking Association, and as Detroit representative of the Comp-

troller of the Currency, for a judgment declaring (1) the Michigan discovery and escheat statute, as amended, applicable to the previously liquidated First National Bank—Detroit, and (2) the defendants subject to the provisions of the statute (R. 3-15). The Comptroller of the Currency appeared specially and moved to dismiss as to him on the ground that he was not subject to the jurisdiction of the United States District Court for the Eastern District of Michigan (R. 46). Connolly appeared generally as receiver and as Detroit representative of the Comptroller of the Currency and moved to dismiss for lack of jurisdiction over the subject matter and on the merits (R. 48). An affidavit by R. B. McCandless, Deputy Comptroller of the Currency in direct charge of the Division of Insolvent National Banks and Insolvent National Bank Receiverships, was filed in support of the motion to dismiss (R. 49). These motions were granted (R. 58). No question was raised on appeal with respect to the dismissal of the petition as to the Comptroller and the order of dismissal as to Connolly was affirmed on the merits (R. 66, 68).

First National Bank—Detroit, a national banking association, closed its doors on February 11, 1933, and did not thereafter resume the conduct of normal banking business (R. 4). On March 13, 1933, a Conservator was appointed for the bank, and, on May 11, 1933, a receiver was appointed under applicable provisions of the National Bank

Act (R. 4, 49). Under the direction of the Comptroller of the Currency, in accordance with the National Bank Act (12 U.S.C. 192), the receiver took possession of the books, records, and assets of the bank, and proceeded to collect its debts, dues and claims (R. 5). C. O. Thomas, the first appointed receiver, remained as such until August 15, 1934, when he was succeeded by B. C. Schram (R. 4).

Prior to the appointment of the receiver on May 11, 1933, a forty (40%) per cent distribution by way of release was made available to creditors and depositors of the bank to aid in relieving the emergency confronting the citizens of Detroit (R. 4, 6, 50). Because of this emergency, the normal procedure of the Comptroller's office in the payment of dividends to depositors and creditors was not followed (R. 50).

Under the applicable provisions of the National Bank Act (12 U.S.C. 192 and 194), (Appendix A, *infra*, pp. 62-64), all moneys realized from liquidation of the bank assets are paid over by the receiver to the Treasurer of the United States, subject to the order of the Comptroller of the Currency. The Comptroller may deposit this money in any regular government depositary, or in any state or national bank located in the city wherein the insolvent national bank is located. Banks accepting such deposits are required to deposit collateral with the Treasurer of the United States, as in the case of

other federal government funds. The Comptroller of the Currency has the statutory duty to pay ratable dividends to the depositors and creditors of the liquidated bank out of the moneys realized from the liquidation of the bank assets.

Even after the first 40% distribution, the Detroit situation still merited emergency measures. A total of 544,630 claims were proved, aggregating $333,173,379.40. The number of claimants was later reduced to 160,271 by the acquisition of a large group of small claims by a group of large depositors. The handling of dividend payments on these claims presented a problem beyond the Comptroller's office space and clerical help. The Comptroller of the Currency, therefore, delegated to the receiver temporary authority to make the distribution of dividends which, under the statute, it was the Comptroller's duty to make. Funds were transferred by the Comptroller of the Currency to special dividend accounts subject to the check, for dividend purposes only, of the receiver. Pursuant to this delegation of authority, the receiver drew checks on the special dividend accounts for payment of a 10% dividend payable on November 15, 1933, a 20% dividend payable on November 30, 1934, and a 10% dividend payable on May 16, 1938. (R. 50-51.) These, with the releases prior to the appointment of a receiver, totalled eighty (80%) per cent to depositors and creditors (R. 51).

After these distributions had been made, the

dividend payment procedure normally pursued under the National Bank Act was followed. The so-called fifth dividend for the remaining 20% of the principal balance on claims was paid on November 1, 1940, by checks drawn by the Comptroller of the Currency against an account maintained in the name of the Comptroller of the Currency. The same was true of the sixth, the interest, dividend paid on December 7, 1942. (R. 51-52.)

To complete the transition to normal procedure, on May 29, 1944, all the bank accounts that had been maintained subject to the receiver's check, under his delegated authority, were closed, and all outstanding receiver's checks covering the distributions made by him were cancelled. Payment was stopped on all checks theretofore delivered but not presented by the holders for payment. New accounts were opened in the Detroit depositary in the name of "Comptroller of the Currency, for the benefit of the Creditors of the First National Bank—Detroit, First Dividend," and similarly for the second, third and fourth dividends. As concerned the delivered but unpresented checks on which payment had been stopped, an equivalent sum in money was placed in the Comptroller's Washington depository bank, secured by the proper collateral deposit with the Treasurer of the United States. When these checks thereafter were presented for payment to the former Detroit depository, they were forwarded to the Comptrol-

ler in Washington who drew his new check on his Washington depository in payment to the claimant. In the case of the voided undelivered checks, the Comptroller drew his checks in favor of the claimants, on his accounts with his Detroit depository, and entrusted these checks to the receiver for delivery on his behalf. (R. 51-52.) All divided payment procedure was then in conformity with that normally followed in national bank receiverships.

B. C. Schram, as successor to C. O. Thomas, continued in charge of the First National Bank—Detroit receivership until June 15, 1944, when the receivership was closed after all remaining assets thereof had been sold to the First Liquidating Corporation, of Detroit, Michigan, under order of court dated September 16, 1942 (R. 52-53). This closing was subject to termination of certain pending litigation and a final accounting with the First Liquidating Corporation. Such litigation was terminated, and the final accounting was made as of December 11, 1944. This final closing of the First National Bank—Detroit receivership, as of June 15, 1944, was reported to Congress in the Comptroller of the Currency's eighty-second annual report to Congress, for the year 1944.[1]

At the termination of every national bank receivership there are invariably numerous dividend

[1] See Table No. 45 beginning at page 164 of the report, and note the above information on page 169 opposite item No. 2299, and in note 10, which apply to the First National Bank-Detroit receivership.

checks uncalled for by creditors. The practice is to forward these to the Comptroller's office in Washington where efforts to effect delivery are continued. In the case of the First National Bank—Detroit receivership, the number of undelivered dividend checks was multiplied over the normal number by reason of the size of the receivership. (R. 53.) To reduce the load of detail and correspondence in the office of the Comptroller in Washington, however, Joseph T. Connolly, an employee of the Comptroller, was sent to Detroit to accomplish further dividend check deliveries in Detroit, and, at the same time, to process the multitude of records preparatory to their final deposit in the National Archives (R. 53). He performed these functions as an employee of the Comptroller and not as a receiver (R. 54).

The termination of a national bank receivership usually leaves certain incidental matters for completion. Releases which have been overlooked or later become advisable, or further real estate documents, such as mortgage discharges where the originals have been lost, for example, may have to be executed. The Comptroller's practice is to maintain what amounts to a perpetual receiver for each closed national bank, even after the receivership is deemed finally closed, to care for such incidental matters. This is usually an employee in the Comptroller's office. Mr. Connolly was given this commission. (R. 53-54.)

Mr. Connolly so functioned in Detroit until June 30, 1946, when, in accordance with plans previously made, all receivership records were shipped to Washington, most of them to be lodged in the National Archieves, and Mr. Connolly's office in Detroit was closed. Such dividend checks as were still undelivered were shipped to the Comptroller's office in Washington. (R. 53.)

The instant case is but one chapter of a controversy, which has now extended over eleven years, in which it has repeatedly been held that the escheat acts of the State of Michigan do not apply to the liquidation, under the National Bank Act, of the insolvent First National Bank—Detroit, a national banking association. *Starr* v. *O'Connor*, 118 F. 2d 548 (C.A. 6), certiorari denied *sub nom. Starr* v. *Schram*, 314 U.S. 695; *Rushton* v. *Schram*, 143 F. 2d 554 (C.A. 6); *Starr* v. *Schram*, 143 F. 2d 561 (C.A. 6); *Black* v. *Delano*, 170 F. 2d 966 (C.A. 6).

In a letter of May 28, 1937, written in response to a letter from the Attorney General of Michigan, the Comptroller of the Currency of the United States advised the Attorney General of his opinion that the escheat acts of Michigan "are not applicable to closed national banks." As a result, on February 14, 1938, the Attorney General filed a declaratory judgment action against the Comptroller of the Currency and the receiver of First National Bank—Detroit, praying for a declaration that the Michigan escheat acts "are applicable to

First National Bank—Detroit, a national banking association, now insolvent and in the process of liquidation." On appeal, the Court of Appeals for the Sixth Circuit held the acts inapplicable on the ground that the receivership was "immune" from state control since the National Bank Act provided a complete system for winding up the affairs of an insolvent national bank and distributing its effects. See Record in Nos. 731 and 732, October Term, 1941.

While a petition for rehearing was pending, the Michigan legislature passed a new escheat act, Act 170 of the Public Acts of Michigan for 1941, and it was formally called to the attention of the court of appeals. *Rushton* v. *Schram,* 143 F. 2d 554, 555 (C.A. 6). Thereafter, his petition for rehearing having been denied, the Attorney General filed two petitions for certiorari with this Court. These were both denied. *Starr* v. *Schram,* 314 U.S. 695.

On March 14, 1942, a successor Attorney General of Michigan filed another declaratory judgment action, based on the Michigan escheat acts as amended by the new Act 170. The prayer of the petition was identical with that in the first action, except for mention of the new Act 170 therein. From an adverse decision, the Attorney General again appealed. In *Rushton* v. *Schram,* 143 F. 2d 554, the amended law was held not applicable and in *Starr* v. *Schram,* 143 F. 2d 561, decided the same

day, the inapplicability of the state escheat laws to a national bank in liquidation was reiterated although the receiver was denied the right, in that proceeding, to recover amounts he had previously paid over to Michigan authorities.

Upon applications filed, this Court granted extensions of time to apply for certiorari, to the Attorney General in the *Rushton* case and to the receiver in the *Starr* case. In his application, the receiver advised the Court that, under direction of the Comptroller of the Currency, he was attempting to arrange an agreement to dispose finally of the entire controversy. A settlement agreement was reached and certiorari petitions were not thereafter filed.

The liquidation of the insolvent First National Bank—Detroit, was completed and the receivership closed as of June 15, 1944, as reported to Congress in the Comptroller of the Currency's eighty-second annual report to Congress (Table 45, p. 169 and note 10).

More than two years later, after all arrangements had been made for delivery of all files and records to Washington, a demand, by letter dated June 20, 1946, was addressed to Mr. Connolly, as receiver, by the Michigan State Board of Escheats for a report covering all undelivered and all delivered but unpresented dividend checks on claims received, passed upon, adjudicated and approved by the bank receiver and the Comptroller of the Currency, concerning which there had been no dealings or

transactions for a specified period. The letter further referred to funds segregated for the payment of the unpresented checks and of the undelivered checks being in the possession of or under the control of, said receiver and the Comptroller. (R. 32-34.)

Five days later, on June 25, 1946, the instant action was filed, and an order to show cause, with a temporary restraining order, issued to force retention of checks, funds and records in Michigan (R. 35). By subsequent agreement, Connolly was permitted to close his office in Detroit and to proceed with the shipment of records to Washington (R. 38). The temporary restraining order was then dissolved and the order to show cause dismissed (R. 40).

The main prayer of the petition in this third declaratory judgment action is the same as in the *Rushton* case, except that it speaks of the bank having now been liquidated. The same escheat act is involved. The court of appeals again held the state act inapplicable "as an unlawful interference with the liquidation of a national bank upon the same principles and authority fully discussed in our previous opinions" (R. 68).

SUMMARY OF ARGUMENT.

I.

A. This case arises under a Michigan statute which has been repealed and it is saved only as a "suit or proceeding" "pending" at the time of re-

pealer. Consequently, the practical effect on these parties of the issuance of the declaratory judgment here sought is problematical. Moreover, the establishment of the Federal Deposit Insurance Corporation and the role assigned it in future liquidations of national banks will sufficiently alter the situation arising out of such liquidations as to drastically diminish the future importance of the precise substantive questions, answers to which are here sought by the appellant. Consequently, there would seem to be no warrant for review of the decision below by this Court unless such review is rendered obligatory by 28 U.S.C. 1254(2).

But 28 U.S.C. 1254(2) provides for an appeal to this Court only when a court of appeals has held a state statute invalid. That is not the case here. In ruling that "the present action brought by the State of Michigan to apply its laws of escheat in the circumstances related constitutes an unlawful interference with the liquidation of a national bank," the court below did not pass on the validity of the laws themselves but, rather, on their application. This Court has held such a ruling to be non-appealable. *Reeves* v. *Williamson*, 317 U.S. 593. The prior decisions upon which the court below relied for its judgment in this case plainly express that court's view that the Michigan statute is inapplicable to the liquidation of the national bank here involved. That is an interpretation of a state statute rather than an invalidation. Consequently, an appeal does not lie.

B. The appellant's failure to obtain jurisdiction over the Comptroller of the Currency bars prosecution of this suit for lack of an indispensable party. The duties of the Comptroller of the Currency under the National Bank Act and the fact that the liquidation of the bank has been concluded leave no doubt that the Comptroller alone would have to respond to a judgment, if entered, and that a decree for the appellant could not expend itself on Connolly as receiver. Connolly had no custody or control of the funds which are the source of the dividend distributions, nor are the records here sought under his control. It is the Comptroller who has the entire duty and obligation under the National Bank Act to administer the affairs of the insolvent bank and to distribute dividends.

Before the receivership is closed, the receiver can respond to suits in which claims of depositors or creditors are sought to be established. But when, as here, the receivership has been closed, only the Comptroller's records, not the bank's, contain the information necessary to make up the reports which the appellant here seeks to require. At this stage, the Comptroller of the Currency is the only responsible official, and his absence from this cause is a fatal defect.

C. Both the Comptroller and the receiver who acts under his direction are officers and agents of the United States and their possession is possession

of the United States. Since this suit is directed to the action of government agents in their official capacities, it is one against the United States which can not be maintained without Congressional consent.

Congress has consented to suits on claims against the bank. But this is not such a suit. It is, rather, an action which seeks to subject federal agents to report requirements, penalties and investigations under state laws. The National Bank Act embodies no consent to such an action.

D. Prior efforts by Michigan Attorneys General to obtain declarations of applicability of the state escheat laws to this national bank in liquidation have been rebuffed by the court below. The parties here are successors in interest of the parties in those cases, and the declaration here sought is the same as was there denied. Consequently, those rulings may be *res judicata* here, "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Cromwell* v. *County of Sac.*, 94 U.S. 351, 352.

E. The constitutional question here sought to be raised by the appellant is not one to be lightly answered. There are many situations in which agencies of the United States occupy positions with respect to private individuals which might render

them subject to state escheat laws. All constitutional questions are intrinsically grave; and the problem here raised is larger than this particular liquidated bank or this particular state law. Under these circumstances, the principle of avoiding decision of constitutional questions whenever possible must be borne uppermost in mind.

The Michigan law whose validity this Court is asked to decide has not been authoritatively construed by the Michigan courts. There is room for serious doubt as to whether the Michigan legislature intended to apply its escheat law to a situation like that at bar. A constitutional decision at this juncture may, therefore, be little more than an "academic and needless dissertation." *A. F. of L.* v. *Watson*, 327 U.S. 582, 596. It follows that the appropriate course in this case would be to remand it to the district court with directions to retain the cause "until a definite determination of the local law questions could be made by the state courts." *Id.* at p. 599.

II.

The application of the Michigan discovery and escheat laws to this liquidated national bank and to the Comptroller of the Currency and his agents charged with responsibility for the liquidation, is constitutionally objectionable on two counts.

A. The National Bank Act has long been recognized by this Court as providing a complete system

for the winding up of insolvent banks and distribution of their assets. The asserted application of the Michigan escheat law is an attempt at substituting Michigan's distributive machinery for the Federal Government's. The Comptroller of the Currency has not in the past, and does not now, resist claims by states as successors in interest to deceased depositors. The provisions of state law of which the Government complains are not the state statutes of descent; they are, rather, the escheat laws which establish a state custodial and distributive system. That system and the federal distributive machinery cannot engage in parallel operations; one must displace the other. Congress, in the National Bank Act, has directed the Comptroller of the Currency to distribute those moneys paid over to him by receivers of national banks. That mandate cannot be put aside by the fiat of state law.

B. In any event, whatever may be the right of the state to the funds in dispute, the discovery, report, and penalty provisions of the state law cannot validly be applied to federal officers performing federal functions. And since the application of these provisions are primarily sought by the appellant in its petition, this constitutional objection stands in the way of the prosecution of this suit.

A state cannot interfere with the power of the United States to carry out the operations of Government pursuant to Congressional direction. "The United States may perform its functions without

conforming to the police regulations of a State." *Arizona* v. *California*, 283 U.S. 423, 451. State taxes can have no valid application to federal property and functions. Where, as here, "the governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation, the inherent freedom continues." *Mayo* v. *United States*, 319 U.S. 441, 445, 448. In the absence of a Congressional direction to submit to report, penalty and visitorial provisions of state law, those provisions cannot be constitutionally applied against federal officials.

ARGUMENT.

I.

This Court Should Not Decide the Question of the Validity of the Michigan Discovery and Escheat Statute as Applied to Funds of a Liquidated National Bank in the Hands of the Comptroller of the Currency of the United States.

This Court's postponement of the question of its jurisdiction and of the motion to dismiss or affirm the appeal until the hearing on the merits (R. 76-77) raises, initially, the question whether an appeal properly lies in the instant case. We submit that the decision of a court of appeals that a state statute of general application does not apply to the Federal Government is not appealable and that, for this reason, the appeal should be dismissed. Various other grounds also exist for dismissing the

appeal or affirming the judgment below without deciding whether the Michigan statute may constitutionally be applied to federal officials carrying out their duties under federal statutes. Consequently, the first point in our brief is devoted to setting out the reasons for not deciding the constitutional question here pressed by the appellants.

A. *An appeal does not lie from the decision below.*—Beyond the intrinsic importance to this Court as a federal Supreme Court of any question as to the scope of its obligatory appellate jurisdiction, the jurisdictional issue whether this Court is obliged to review the judgment below is obviously one of consequence to the parties to this cause. The concern of the parties with the question whether an appeal lies is not minimized by the pendency of the petition for a writ of certiorari to review the judgment of the Court of Appeals for the Sixth Circuit in this case. No. 21, this Term. This is so because the situation here seems to be plainly one in which discretionary review should be withheld, so that the question of appeal becomes a question of review *vel non*.

This case revolves about a Michigan statute which has been repealed. Act No. 329, Public Laws of Michigan for 1947 (p. 591), Mich. Stats. Ann., Sec. 26.1053(65). This repealer does not terminate this particular litigation because a "pending suit or proceeding" is saved. But even if the Michigan Attorney General were to secure the declaration of applicability of the old escheat law which he seeks,

there is real question whether that declaration would have any appreciable practical effect. For there is certainly a serious question as to whether an actual escheat could be accomplished without the institution of a new suit in a Michigan circuit court in chancery under Section 9(b) of the old Michigan escheat law or in a state probate court under Section 10 of that law. See Appellant's Br. 16-17. Such a new suit could not, however, be brought, since the statute authorizing it has been repealed.

There can be no assurance that a decision of this Court as to the validity of the old law would be controlling on a suit brought under the new Michigan code of escheats. Cf. Appellant's Br. 29-30. The language and structure of the new Michigan code raises grave doubts as to whether that enactment was ever intended to be applied to national banks being liquidated under the direction and supervision of the Comptroller of the Currency of the United States. While Section 5 of the escheat code (Mich. Stats. Ann., sec. 26.1053(5) includes in its definition of a "holder" of "abandoned property," "a bank, either state or national," "a receiver or other liquidating officer," and "a governmental department, institution or agency," other provisions give one serious pause as to whether the Michigan legislature intended to apply its escheat laws to the Comptroller of the Currency or his agents in a situation like that at bar. Thus, for example, a purpose to reach an officer of a federal

court is accomplished by an explicit statement that an "officer of a court in this state" includes an officer of the "federal courts." Section 11. Specific provision is made for "governmental agencies of the state" in order that they be deemed "a holder" "of unprotected or abandoned property." Section 21. But no such general provision is made for federal "governmental agencies."

The problems of construction thus raised by the new code are new problems; as will be seen, they are different from the problems of construction raised by the old law. See *infra*, pp. 44-47. Moreover, the establishment of the Federal Deposit Insurance Corporation since the insolvency of the national bank here involved, the requirement that that Corporation be the receiver of a national bank, the provision for subrogation of the Corporation to claims of depositors, and the specific treatment prescribed with respect to the rights of depositors who fail to claim insured deposits, underlines the fact that this case may possibly be of financial interest to the parties, of perhaps historical and academic interest to the bar, but of plainly insufficient importance for the future. 12 U.S.C. 264(a), (l) (3), (l) (7), (m) (5). And so, unless 28 U.S.C. 1254 (2) leaves this Court with no alternative, intervention into this dying, if not dead, controversy would be plainly inappropriate.

That 28 U.S.C. 1254 (2) does not require review of this cause is a proposition we shall now proceed

to demonstrate. A right to appeal is there conferred on "a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States." Appendix A, *infra*, p. 60. But the obligatory appellate jurisdiction of this Court has been held restricted to a narrow class of cases, and the right of appeal has been denied whenever the prescribed conditions have not been rigorously fulfilled. *Memphis Natural Gas Co.* v. *Beeler*, 315 U.S. 649, 651; *Phillips* v. *United States*, 312 U.S. 246, 250. This rule has resulted in the denial of an appeal under predecessor provisions of 28 U.S.C. 1254(2),[2] where the application of a state statute to a particular situation, as distinguished from the statute itself, has been held unconstitutional by a court of appeals. *Reeves* v. *Williamson*, 317 U.S. 593; *Gamble* v. *Daniel*, 281 U.S. 705. In the instant case, the Michigan escheat law was held inapplicable to a liquidated national bank, but the constitutionality of the law itself was not in issue. Thus the decision falls squarely within the area in which appeal jurisdiction is denied.

The main prayer of appellant's petition was for a declaration that the Michigan escheat act, as

[2] The Reviser's Notes with respect to 28 U.S.C. 1254 state that the "effect of subsections (1) and (3) of the revised section [covering certiorari and certification] is to preserve existing law and retain the power of unrestricted review of cases certified or brought upon certiorari. *Only in subsection (2) is review restricted*". [Italics supplied.] See West Pub. Co. ed., p. 1824.

amended, "is applicable to the First National Bank—Detroit, a national banking association, heretofore declared insolvent and since such insolvency liquidated" (R. 14). Appellees' motion to dismiss did not urge the invalidity of the Michigan law (R. 48-49). Appellee's position in both courts has been (1) that the state statute does not apply because the National Bank Act provides a complete and exclusive system for the winding up of the affairs of an insolvent national bank, and (2) that no cause of action was stated because, pursuant to the federal statute, all funds realized from the liquidation of the insolvent national bank were paid over to the Comptroller of the Currency for distribution, and the Comptroller was not before the court.[3] In sustaining the dismissal of the petition, the court of appeals held that "the pres-

[3] Contrast the position taken by the R.F.C. in *R.F.C.* v. *Beaver County*, 328 U.S. 204, upon which the appellant relies (Br. 28). The appellant there said that "the Pennsylvania Statutes, to the extent that they impose a tax on machinery and equipment owned by the Defense Plant Corporation are violative of the Constitution and Statutes of the United States." No. 40, October Term, 1945, R. 4. See also R. 5 in that record.

While the phraseology of the pleadings will not themselves determine whether an appeal will lie (see appellant's brief, p. 28) if the opinion of the court plainly shows that the validity of the statute was passed upon (*Charleston Ass'n* v. *Alderson*, 324 U.S. 182, 185-186), the pleadings are highly relevant aids to a determination of the question decided by the court. Here, the court of appeals did not pass on validity, its decision constituting a resolution of the issues as framed by the parties. See *infra*, pp. 26-28.

ent action brought by the State of Michigan to apply its laws of escheat in the circumstances related constitutes an unlawful interference with the liquidation of a national bank" (R. 68), and not that the escheat laws themselves are unconstitutional.[4] The statute, therefore, has not been held "to be invalid as repugnant to the Constitution" (28 U.S.C. 1254(2)), and no appeal lies.

In *Reeves* v. *Williamson*, *supra*, this Court dismissed for want of jurisdiction an appeal from a decision of the court of appeals which held that a tax imposed under a Kentucky statute upon funds deposited in a United States postal savings depositary could not be collected because it "substantially burdens an instrumentality of the federal government." *Re Kentucky Fuel Gas Co.*, 127 F. 2d 657 (C.A. 6). In *Gamble* v. *Daniel*, *supra*, jurisdiction by appeal was held lacking where the court of appeals upheld an order directing a state liquidating agent acting under Nebraska statutes to turn over the books, accounts, and records of a trust company adjudicated a bankrupt to a receiver in bankruptcy. In overruling the claim that Nebraska's statute applied, the court of appeals held

[4] This distinction has heretofore been deemed crucial. Robertson & Kirkham, *Jurisdiction of the Supreme Court*, pp. 2[illegible]-24. Although this discussion deals with state courts, the same rules govern with respect to appeals from federal courts of appeal. See *id* at pp. 191-192. See also Boskey, *Appeals from State Courts under the Federal Judicial Code*, (1943) 30 Va. L. Rev. 57, 64, and cases cited in note 22.

that "there can be no question of the precedence of the Bankruptcy Act nor of the duty of the federal courts to sustain that act and the jurisdiction, rights, and duties thereunder." *Gamble* v. *Daniel*, 39 F. 2d 447 (C.A. 8). Similarly, the validity of a state statute will not be considered "drawn in question" for purposes of an appeal under 28 U.S.C. 1257(2) where the method of applying the statute rather than the statute itself is attacked. *Charleston Ass'n* v. *Alderson*, 324 U.S. 182, citing *Reeves* v. *Williamson*, *supra*, at 324 U.S. at 185; *Memphis Natural Gas Co.* v. *Beeler*, *supra*; *Baltimore National Bank* v. *State Tax Commission*, 296 U.S. 538 (from *State Tax Comm.* v. *Balt. Nat. Bk.*, 169 Md. 65, 180 A. 260).

These decisions are controlling in the case at bar. The cases cited by appellant are not in point since they related to the power of the State to enact the statute in question and resulted in its invalidation. Certainly, the opinion of the court below is the best evidence of the scope of its decision. Bearing in mind that the opinion in this case rests on the court's previous adjudications,[5] its description of what it had previously held is of the greatest significance (R. 67):

> In *Rushton, Att'y. Gen* v. *Schram* * * * we held that the amendatory act did not ap-

[5] *Starr* v. *O'Connor*, 118 F. 2d 548, certiorari denied *sub nom. Starr* v. *Schram*, 314 U.S. 695; *Rushton* v. *Schram*, 143 F. 2d 554; *Starr* v. *Schram*, 143 F. 2d 561.

> ply *retroactively* to dormant deposits in the insolvent First National Bank—Detroit. * * *
>
> We expressed the further presumption that the Michigan legislature had not designed to nullify the decision of this court in the *Starr* case, but had enacted a law intended to operate *prospectively* only. * * * One of our judges, however, based concurrence in the result reached upon the proposition that the Michigan amendatory act operated in the context as an unlawful interference with the liquidation of a national bank as provided for in Title 12, Section 194, of the United States Code. The majority opinion did not gainsay this, but attributed to the Michigan legislature no intended interference with the liquidation of the First National Bank—Detroit.

Despite this explicit statement of the difference between the majority view and that of Judge Simons, concurring, and the absence of any statement that the majority now chose to rest its decision on the broader grounds,[6] the appellant suggests that the majority came around to Judge Simons' way of thinking in *Starr* v. *Schram,* 143 F./2d 561, 562. Br. 23. But that is hardly likely, since that decision was handed down at the same time as the decision in *Rushton* v. *Schram,* in which

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[6] In the light of what has been previously said, it is not believed that adoption of Judge Simons' view by the majority of the court would, in any event, sustain the appeal to this Court.

the differing views of the majority and the concurring judge required separate statement.

The determination by the court of appeals of the applicability of the state law presents no question which gives this Court jurisdiction of the appeal. *Pub. Serv. Comm.* v. *Batesville Tel. Co.*, 284 U.S. 6; *Baxter* v. *Continental Casualty Co.*, 284 U.S. 578. Even when a particular construction is put upon a statute in order "to avoid embarrassing and doubtful questions of constitutional power," such a ruling leaves "the validity of the statute * * * untouched" and an appeal will not lie. *Hopkins Savings Assn.* v. *Cleary*, 296 U.S. 315, 332, and note 4.

B. *The Comptroller of the Currency is an indispensable party to this action.*—The Comptroller of the Currency is an indispensable party to this action since a "decree granting the relief sought will require him to take action, either by exercising directly a power lodged in him or by having a subordinate exercise it for him." *Williams* v. *Fanning*, 332 U.S. 490, 493. The prayer for relief in appellant's petition, considered in the context of the requirements of the Michigan statute, the duties of the Comptroller of the Currency under the National Bank Act, and the status of the liquidation leaves no doubt that action by the Comptroller or by a subordinate pursuant to his direction is called for and that a decree entered in favor of appellant could not expend itself on Connolly as receiver.

The petition seeks a decree declaring the Michigan discovery and escheat laws applicable to the liquidated national bank and declaring the receiver subject to the provisions of these laws (R. 14). The Michigan law defines a "depositary" as any person "who or which has in his or its possession or under its control any property, real, personal or mixed, including liquidated choses in action, for which he or it is indebted or accountable to any other person as depositor" (R. 17). Depositaries are required to file reports with respect to dormant deposits with the state board of escheats and to subject their books and records to examination by the state board of escheats or the Attorney General (R. 18-20). Penalties are provided for failure to comply with the reporting requirements and several procedures are authorized for escheating to the state moneys or credits owed with respect to which there have been no transactions or dealings for seven years (R. 20-23). The petition makes clear that its purpose is to have these various provisions declared applicable so that funds held against returned and unclaimed dividend checks, checks which were not deliverable, and checks not presented for payment, could be taken into the custody of state officers and eventually escheated to the State of Michigan (R. 3-15).

It is impossible to read the pertinent provisions of the National Bank Act so as to permit the Michigan laws to operate on Connolly as receiver rather than on the Comptroller of the Cur-

rency. As will be seen, the receiver is not now and never was a depositary under the Michigan laws since he was never "indebted or accountable" to any person except the Comptroller. He is not in possession of, and has no control over, the funds which the state wishes to reach. And he does not have the books or records necessary for filing the statutory reports or for submission to examination by state officials.[7] All of these are in the possession and control of the Comptroller of the Currency.

Under the provisions of the National Bank Act applicable herein, all duties of the bank receiver are performed under the direction and control of the Comptroller, and he must make report of all his acts and proceedings to the Comptroller. 12 U.S.C. 192. The receiver's duties go only to the liquidation of the bank assets, under the direction and control of the Comptroller. The receiver is required to pay over all moneys realized from the bank's assets to the Treasurer of the United States, subject to the order of the Comptroller. 12 U.S.C. 192. All distributions are the function of the Comptroller alone and not the receiver. The statute provides that "the comptroller shall make a ratable dividend of money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of com-

[7] It is not suggested that the unavailability of the books and records to Connolly, because of their transmission to Washington, stands in the way of appellant's suit. See stipulation, R. 38-40. Connolly's inability to produce would be the same had the records remained in Detroit. See *infra*, pp. 32-33.

petent jurisdiction" (12 U.S.C. 194). Congress has thus placed on the Comptroller the entire responsibility for the winding up of the affairs of an insolvent national bank. As stated in *Ex parte Chetwood*, 165 U.S. 443, 458, "The receiver acts under the control of the Comptroller of the Currency and the moneys collected by him are paid over to the Comptroller, who disburses them to the creditors of the insolvent bank." See also *United States* v. *Weitzel*, 246 U.S. 533, 540. Moreover, there is no authority in the courts to prevent the receiver from carrying out his statutory duty to pay over to the Treasurer of the United States, subject to the order of the Comptroller of the Currency, all moneys realized by him from liquidation of the bank's assets. *Earle* v. *Conway*, 178 U.S. 456; *Earle* v. *Pennsylvania*, 178 U.S. 449, 454-455, 456.

Since the Comptroller has the sole statutory responsibility for the dividend distribution, he has control of the funds. He has the records covering the distribution to date. Any report made must come from him to be complete. Any funds appellant seeks to take over must come from accounts in his name. He is the instrumentality appellant seeks to supplant. The opposing interests in the case at bar are the Comptroller's and the appellant's. No interest or duty of the receiver is threatened.

The possession and control of the Comptroller are practical realities in the instant case as well

as statutory responsibilities. Long prior to the demand involved herein and the institution of this action, all the normal functions of the bank receivers, as well as the additional delegated authority, had been terminated. The receiver had completely performed his statutory duties and had divested himself of all funds as of December 11, 1944. Appellee was in fact an employee of the Comptroller who was receiver in name only to assist in clearing titles and similar incidental matters. The Comptroller drew every dividend check described in the demand for a report as well as every valid dividend check undelivered or outstanding when this suit was filed (R. 51,52). The undelivered dividend checks were all drawn by and are in the possession of the Comptroller. All valid outstanding and unpaid dividend checks are admittedly drawn against funds deposited to the credit of the Comptroller and subject to his control.

Appellant's suggestion that the records relevant to this action are required by 12 U.S.C. 192 to be retained by the receiver (Brief for appellant, p. 51) clearly misconceives the effect of that section because of his confusion of the three sets of books and records involved in the liquidation of an insolvent national bank. These include (1) the books and records of the bank, containing entries to date of suspension only, which are destroyed as no longer useful when the receivership is closed; (2) the receiver's records of the assets that passed into

his hands and his accounting for the proceeds thereof to the Comptroller; and (3) the only records involved here, the books of the United States in which the Comptroller records the moneys paid him by the receiver under 12 U.S.C. 192 and all the Comptroller's dividend transactions pursuant to 12 U.S.C. 194. Neither the records of the bank nor the receiver could contain the information required for the reports contemplated by this action. Only the Comptroller's records would supply the necessary information.

In summary, appellee had in fact no custody or control of the funds from which dividend distribution was and is being made, nor any control over the distribution. The records concerning dividend distribution are the Comptroller's records and the funds are the Comptroller's funds, since the Comptroller has the entire duty and obligation under the National Bank Act to administer the affairs of insolvent banks and to make and distribute the dividends. The decree sought would require action of the Comptroller of the Currency—a report as to matters entrusted to him by federal statute and in his control only, for use in connection with an asserted right to the seizure of money in the Comptroller's custody and control. Thus, the action invades the Comptroller's interests and duties, and it is upon him that the decree sought would operate.

In federal declaratory judgment actions the question is whether the facts alleged show a sub-

stantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Maryland Casualty Company* v. *Pacific Coal & Oil Company*, 312 U.S. 270; *Aetna Life Insurance Company* v. *Haworth*, 300 U.S. 227, 239. Here there is no "immediacy and reality" to the controversy between the appellant and this appellee. The Comptroller, the only party who has possession of the checks and records necessary to the preparation of the report demanded and of the money sought, whose rights, duties and interests are being threatened with infringement, and whose action would be required by any judgment is not in the case. Under the recent decision of this Court in *Williams* v. *Fanning, supra*, the Comptroller is an indispensable party in these circumstances to the granting of the relief appellant seeks. See *Webster* v. *Fall*, 266 U.S. 507; *Gnerich* v. *Rutter*, 265 U.S. 388; *Warner Valley Stock Co.* v. *Smith*, 165 U.S. 28; cf. *Miguel* v. *McCarl*, 291 U.S. 442, 455.

In support of his contention that he may proceed against appellee, as receiver, alone, appellant's brief (p. 48) cites several decisions of this Court sustaining suits against receivers alone with respect to claims against national banks. These cases are distinguishable in that they all deal with the establishment of claims of depositors or creditors of the bank which were brought before the

close of the receivership.[8] Those are merely the normal type of litigation in which every national bank receivership has found itself involved—that covered by the language of the National Bank Act concerning claims "adjudicated in a court of competent jurisdiction." But when suit is brought to *collect* a dividend rather than to *adjudicate or establish* a claim, the Comptroller of the Currency is the appropriate party defendant. *White* v. *Knox*, 111 U.S. 784. This basic distinction also explains why the Comptroller was an unnecessary party in *Starr* v. *O'Connor*, 118 F. 2d 548, which involved the assertion of claims by the state in this receivership when it was open and when all the relief sought was within the framework of adjudication of claims. The different situation that prevails when suits of a different character are involved is illustrated by *Merrill* v. *National Bank of Jacksonville*, 75 Fed. 148 (C.A. 5), affirmed, 173 U.S. 131. In addition to the adjudication of or-

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[8] This is established by comparing the dates of the closing of the receiverships, set out in the Comptroller's annual reports to Congress, with the dates of the decisions relied on by the appellant.

Case	*Citation*	*Date Decided*	*Date of Closing of Receivership Involved*	*Date and Page No. of Compt's Annual Report*
Case v. *Bank*	100 U.S. 446	Oct. T., 1879	June 1, 1881	Dec. 5, 1881—p. 154*
Armstrong v. *Am. Exch. Nat. Bank*	133 U.S. 433	Mar. 3, 1890	Oct. 30, 1909	Dec. 6, 1909—pp. 328, 345
Earle v. *Conway*	178 U.S. 456	May 14, 1900	Sept. 30, 1916	Dec. 4, 1916—p. 136
Merrill v. *Nat. Bank of Jacksonville*	173 U.S. 131	Feb. 20, 1899	Oct. 1, 1900	Dec. 3, 1900—pp. 480, 493
Am. Surety Co. v. *Bethlehem Nat. Bank*	314 U.S. 314	Dec. 8, 1941	Aug. 20, 1943	Jan. 10, 1944—pp. 70, 75

* Report of Dec. 6, 1880, p. 136 shows receivership open and total dividends paid 80%, Report of Dec. 5, 1881, shows receivership closed and total dividends paid 84.83%

dinary claims, the lower court also ordered the receiver to file an accounting as to the bank assets, the collections he had made and the expenses incurred in administering the receivership. In reversing the lower court as to this, the court of appeals said (p. 153):

> The appellee had a right to resort to the court to have his claim adjudicated when it was refused by the comptroller, but it is very doubtful whether, on the case made by the bill and answer, if in any case, the receiver, in a suit in which the comptroller is not a party, can be made to account for an administration of which the comptroller is solely responsible.

The attempt to obtain the reports in the instant case would seem to present a comparable case.

C. *This is a suit against the United States to which it has not consented.*—The thrust of the present action, as has just been shown, is toward the duties conferred upon the Comptroller of the Currency by federal statute in his official capacity in connection with the liquidation of insolvent national banks. The status of the Comptroller as a federal official cannot be questioned. 12 U.S.C. 1, 2. Similarly, the receiver appointed to perform his duties "under the direction of the comptroller" (12 U.S.C. 192) is also an agent of the United States. See *Auten* v. *United States National Bank of New York*, 174 U.S. 125, 141; *Roth* v. *Hood*, 106 F. 2d 516, 617 (C.A. 6); *Granzow* v. *Village of Lyons, Ill.*, 89 F. 2d 83, 85

(C.A. 7); *Steele* v. *Randall*, 19 F. 2d 40, 42 (C.A. 8). And "the possession of the receiver appointed by the Comptroller * * * is the possession of the United States." *Port Newark National Bank* v. *Waldron*, 46 F. 2d 296, 298 (C.A. 3); cf. *Chemical National Bank* v. *Armstrong*, 59 Fed. 372, 375 (C.A. 6), affirmed, 176 U.S. 618. The United States clearly has an interest in, and a duty with respect to, the funds realized in liquidation. *O'Connor* v. *Rhodes*, 79 F. 2d 146, 151 (C.A.D.C.); *Richmond, F. & P. R. Co.* v. *McCarl*, 62 F. 2d 203 (C.A.D.C.), certiorari denied, 288 U.S. 615; cf. *Haskins Bros. & Co.* v. *Morgenthau*, 85 F. 2d 667 (C. A. D. C.), certiorari denied, 299 U.S. 588. Since the suit is directed to the action of government agents in their official capacities, it is clearly a suit against the United States which cannot be maintained without the Government's consent. *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 682, 688, and dissenting opinion, pp. 711-712; *Maricopa County* v. *Valley National Bank*, 318 U.S. 357. Nor does the fact that a state may be the party plaintiff create any exception to the rule of immunity of the United States against suit without its consent. *United States* v. *Alabama*, 313 U.S. 274; *Minnesota* v. *United States*, 305 U.S. 382, 387.

The consent of the United States has not been expressly given and cannot be implied from the statutory provisions relating to the administration of insolvent national banks. The Comptroller

is required to cause notice to be given "calling on all persons who have claims against such association to present the same, and to make legal proof thereof" (12 U.S.C. 193). He is also directed to make a ratable distribution of funds "on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction" (12 U.S.C. 194). Provision has thus been made for suits to establish the claim of creditors of the insolvent bank. But appellant here was not a depositor in, or creditor of, the bank and is not seeking to adjudicate a claim against the insolvent bank. This is an action which seeks to subject federal agents to report requirements, penalties, and investigations under state laws. And the National Bank Act embodies no consent to such an action.

Since a depositor or creditor could not bring this suit, no claim against the insolvent bank being asserted within the meaning of the National Bank Act, a successor in interest cannot. Moreover, the appellant is not here suing as the successor in interest of a depositor or creditor for, as the Supreme Court of Michigan recently held: "The term escheat is distinct from succession to heirs and next of kin. [Escheat] 'is rather a right to confiscate property to which there is no other claimant.'" *In re Rapoport's Estate*, 317 Mich. 291, 301, 312, certiorari denied *sub nom. California* v. *Michigan State Board of Escheats*, 332 U.S. 764.

D. *A prior adjudication in a suit between the predecessors of the parties to this action may op-*

erate as a bar here.—The prior decisions of the Court of Appeals for the Sixth Circuit may be *res judicata* as to the instant action. *Starr* v. *O'Connor*, 118 F. 2d 548, certiorari denied *sub nom. Starr* v. *Schram*, 314 U.S. 695; *Rushton* v. *Schram*, 143 F. 2d 554; *Starr* v. *Schram*, 143 F. 2d 561. The parties in those cases are privies of the parties here. The issues in all the actions are virtually the same. The same statute is involved in the instant case as in the two latter cases. In all the cases, the question was the applicability of the Michigan escheat laws to the liquidation of the First National Bank—Detroit, a national banking association. As the court of appeals said, the "present battle is fought upon essentially the same legal grounds upon which former contests have been waged" (R. 68).

In *Starr* v. *Schram*, *supra*, the court upheld a district court decree to the effect that the Michigan escheat statutes "constitute an unlawful interference with the liquidation of an insolvent national bank, and are inapplicable to the receivership in the instant case" (p. 562). In the instant case, the petition prayed for a judgment declaring the very same laws "applicable to the First National Bank—Detroit, a national banking association, heretofore declared insolvent and since such insolvency liquidated" (R. 14). The court below affirmed the dismissal of the petition on the ground that "The present action brought by the State of Michigan to apply its laws of escheat in the circumstanees related constitutes an unlawful interference with the liqui-

dation of a national bank upon the same principles and authority fully discussed in our previous opinions" (R. 68). The identity of parties and issues is apparent. In these circumstances, it may be that the instant case can be disposed of on grounds of *res judicata*.. See *Fishgold* v. *Sullivan Corp.*, 328 U.S. 275, 282; Black, *The Law of Judgments* (2d ed.), pp. 764, 821, 936.

Even if a distinction be perceived between the cases brought under the same statute in that its applicability in the earlier case related to dormant deposits whereas the present case is directed to dormant dividend distributions, the doctrine of *res judicata* may nevertheless be applicable because this question could have been presented at the same time. A prior judgment "is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Cromwell* v. *County of Sac*, 94 U.S. 351, 352. See also *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413, 415; *Grubb* v. *Public Utilities Commission*, 281 U.S. 470, 479; *Stoll* v. *Gottlieb*, 305 U.S. 165; *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U.S. 371, 375, 378.

E. *The constitutional issue should not be decided in the absence of an authoritative state court determination of the question of state law.*—From its very beginning, this Court has announced and ap-

plied the rule that it will not decide a "constitutional question in advance of the necessity for its decision." *Federation of Labor* v. *McAdory*, 325 U.S. 450, 461, and cases cited; Mr. Justice Brandeis concurring, in *Ashwander* v. *Valley Authority*, 297 U.S. 288, 346-348. One aspect of that rule is that, whenever possible, a statute should be construed to avoid, rather than to present, a constitutional question. *United States* v. *C. I. O.*, 335 U.S. 106; *United States* v. *Delaware & Hudson Co.*, 213 U.S. 366, 407-408; *Knights Templars Indemnity Co.* v. *Jarman*, 187 U.S. 197, 205; *Harriman* v. *I. C. C.*, 211 U.S. 407; *Federal Trade Commission* v. *American Tobacco Co.*, 264 U.S. 298, 307; *Missouri P. R. Co.* v. *Boone*, 270 U.S. 466, 471-472; cf. *Blodgett* v. *Holden*, 275 U.S. 142, 147.

This doctrine of avoidance has special pertinence here. The problem presented by this case is much larger than whether the Comptroller of the Currency, as the liquidator of insolvent national banks, must submit to regulation by the State of Michigan. The situations are legion in which agencies of the United States occupy positions with respect to private individuals which would render them depositaries under the Michigan law. There are many situations in which the Government may be in the position of holding funds which are owed to, or are the property of, claimants whose whereabouts are unknown and who have not been heard from for long periods of time. To suggest but a few, this might be true of holders of savings and other gov-

ernment bonds, depositors in postal savings accounts, unpaid postal money orders, members of the military or civil service of the United States with unclaimed wages or other claims, beneficiaries of servicemen's insurance policies, and the host of situations in which some agency of the United States may become the custodian of property belonging to others. For some indication of the scope of these situations, see Permanent Appropriation Repeal Act of June 26, 1934, 48 Stat. 1224, 1230, Section 17. There may also be many claims against the United States based upon the variety of business transactions in which the Government engages with private individuals in carrying out its government functions. Moreover, questions involved in the escheat of "abandoned" personal property are not confined to the Michigan statute. As recently observed, "escheat of these interests is a newly exploited, if not newly discovered source of state revenue." *Connecticut Ins. Co.* v. *Moore*, 333 U.S. 541, dissenting opinion, p. 563.

The court below was fully cognizant of the influence of these factors on the problem of construing the Michigan law. In *Rushton* v. *Schram*, 143 F. 2d 554, upon which it relied heavily for its decision in this case (R. 67-68), the court said (143 F. 2d at 558, 559):

> It should not be implied that the Michigan legislature intended to promulgate a retroactive law, which would interfere with the complete system provided by Congress for winding up national banks * * *.

> Surely the legislature took cognizance of the principle that national banks are immune from such state control as would conflict with the laws of the United States. * * *
> * * * * * * * * *
> If an interpretation of a state statute can be reasonably adopted which does not bring the enactment within the inhibition of federal law, that interpretation should prevail against another which would rest upon an assumption that the state legislature intended to enact a law in conflict with the constitution or statutes of the United States.

If, as we have already suggested (*supra*, pp. 22-28), the court below, in this case, held the Michigan escheat laws inapplicable to this liquidated national bank, its decision is not an appealable one under 28 U.S.C. 1254(2). Consequently, this Court can reach further questions on this appeal only after it determines that the court below has held the statute applicable but invalid.

But even assuming that the opinion below can be so read, the Government believes that this Court should, nevertheless, not decide the constitutional question presented. As "questions of federal constitutional power have become more and more intertwined with preliminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law." *Spector Motor Co.* v. *McLaughlin*, 323 U.S. 101, 105, and cases cited. In this case, the Michigan courts "have the final say as to" the meaning of the Michigan

escheat law. "When authoritatively construed, it may or may not have the meaning or force which [appellant now assumes] that it has. In absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What would now be written on the constitutional questions might therefore turn out to be an academic and needless dissertation." *A. F. of L.* v. *Watson*, 327 U.S. 582, 596. That a court of appeals of a circuit embracing the state whose law is in question has decided that question of state law is not sufficient basis for a decision on a question of constitutionality by this Court. *Spector Motor Co.* v. *McLaughlin*, 323 U.S. 101, 102, 103; cf. *Propper* v. *Clark*, 337 U.S. 472, 489-492. And judicial abstention is particularly appropriate when, as here, the suit is for a declaratory judgment—a "procedure [which] may be resorted to only in the sound discretion of the Court and where the interests of justice will be advanced and an adequate and effective judgment may be rendered." *Federation of Labor* v. *McAdory*, 325 U.S. 450, 462, and cases cited.

The interpretation put on the Michigan law by the court below in *Rushton* v. *Schram*, 143 F. 2d 554, is but one source of doubt as to whether the Michigan law would reach the national bank liquidation here involved.[9] The text of the act gives

[9] On October 9, 1912, Michigan Attorney General Roger I. Wykes wrote an opinion to the Commissioner of the State Banking Department. The Attorney General concluded as

rise to further questions requiring authoritative decision. The reach of the Michigan discovery and escheat statute is limited by its definition of the words "person" or "persons" to include "a natural person, a copartnership, a company, an association, a bank, a trust company, a corporation, *except municipal corporations, or any officer thereof, any governmental department, agency, instrumentality or official,* a depositary, a receiver, a trustee, a fiduciary, a debtor, a custodian, a liquidating officer, or any combination of natural person." Section 13458-2 [appearing as 13458-3 at R. 17], Sec. 4b (italics supplied). The depositaries subject to the reporting and other provisions of the Michigan statute are those which are embraced in the above definition of persons. *Ibid.*

Accordingly, if government officials are excluded from the definition of "persons" in the Michigan law, the question whether the statute can constitutionally be applied to funds in the possession of the Comptroller of the Currency does not arise.

It is apparent from a reading of the portions of the definition underscored above that the extent of the exception provided is not clear. The

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follows: "I am inclined to the opinion that the Michigan act relating to reports by banks of escheated deposits would if construed to apply to national banks be held to be in violation of the national banking act. I conclude, therefore, that the Michigan escheated estate act, so far as it relates to reports of escheated deposits by banks, should be construed as not applying to national banks." Ann. Rep't, Mich. Att'y Gen., 1913, pp. 134-135.

exclusionary provision may be read, for example, as embracing only "municipal corporations, or any officer thereof" or it may be deemed to include as well "any governmental department, agency, instrumentality or official." In view of the two disjunctive phrases and the return after "or official" to the article "a" used in the earlier part of the definition, the grammatical structure of the sentence does not dictate a termination of the excepting clause at one point or the other. The interpretation that government officials are excluded, however, is supported by other statutory language. The provisions for signing reports under the Act describe the authorized procedure for natural persons, partnerships, corporations, and others, but completely omit reference to reports by government agencies or officials. Section 13460 [appearing as 13460-1 at R. 18], Appendix, *infra*, p. 67. Since the Comptroller of the Currency under federal law is the statutory holder of the funds for distribution and the official who has the statutory obligation to distribute the liquidated assets to creditors, it is clear that the exception of government officials would render the Michigan statute inapplicable to him.

Other provisions of the Michigan act also indicate that it is not applicable here. It is stated to apply to "each person within this state, who or which as a depository is indebted or accountable to any other person for money, credits, securities or property of any kind." 13460 [appearing as 13460-1 at

R. 18], Sec. 6. Section 4b defines depository to include any person "who or which has in his or its possession or under its control any property * * * for which he or it is indebted or accountable to any other person as depositor." The Comptroller is not within Michigan, and the receiver is neither indebted nor accountable to anyone other than the Comptroller. 12 U.S.C. 192, 194.

It does not appear that either of these questions has been submitted to the Michigan courts.[9a] Since the necessity of deciding an important constitutional issue in the instant case depends on a genuinely doubtful question of state law, we submit that the proper course in this case would be to direct "the District Court to retain the bill until a definite determination of the local law questions could be made by the state courts." *A. F. of L.* v. *Watson*, 327 U.S. 582, 599, and cases cited *supra*, p. 44; *Thompson* v. *Magnolia Petroleum Co.*, 309 U.S. 478; cf. *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U.S. 129. It need hardly be said that if this Court should itself decide to resolve the disputed questions of state law, an interpretation which will avoid the constitutional questions would

[9a] It is significant that the Michigan Supreme Court has said that "Even a casual review of the Michigan escheat law, and particularly the 1941 amendment, convinces that it is piecemeal legislation with many apparent inconsistencies. * * * We are compelled to construe Act No. 170 * * * in such manner as to avoid constitutional pitfalls, if this can be reasonably done within the legislative intent." *Evans Co.* v. *State Bd. of Escheats*, 307 Mich. 506, 548.

be consonant with the principles that have always guided this Court in the exercise of its most delicate functions. See *supra*, pp. 40-41.

II.

The Michigan Discovery and Escheat Law Cannot Validly Be Applied Against Federal Officers Charged with the Liquidation of a National Bank.

Two distinct constitutional obstacles stand in the way of appellant's efforts to apply the Michigan discovery and escheat laws to liquidated national banks. In the first place, to compel a transfer of custody to state officials is to intrude upon a function exclusively committed to the Comptroller of the Currency by the National Bank Act. Secondly, the discovery, report, and penalty provisions of the Michigan law would, if here applied, unconstitutionally subject federal officers, in the performance of their official duties, to state regulation.

A. *The Michigan escheat law cannot displace the distributive powers granted the Comptroller of the Currency by the National Bank Act.*—The question in this case is not whether the state's ownership of a claim against the receiver of a national bank or the Comptroller of the Currency will be respected by the federal officials charged with the liquidaton of a national bank. The question is, rather, whether the right to distribute unclaimed funds arising out of a national bank liquidation can be taken from the Comptroller of the Cur-

rency and exercised by the state purely by the fiat of state law. The distinction is basic.

When a state, by the operation of its laws of descent succeeds to a depositer's claim against an insolvent national bank, the Comptroller must and does honor that claim.[10] Cf. *United States* v. *Klein*, 303 U.S. 276, 280. The "escheat or appropriation by the state of property in fact abandoned or without an owner is * * * as old as the common law itself." *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233, 251. But that is not such an escheat as the Government is here resisting.[11] The Michigan escheat law here sought to be applied is not a state statute of descent.[12] Here, "Dormancy without more is made the statutory ground for the state's taking" unclaimed deposits and dividend checks "into its custody." *Ibid.* See Section 13463-1, [appearing as 13463-2 at R. 22], 9a of the Michigan law. As has been noted, *supra*, p. 38, the Michigan Supreme Court has recently made it clear that "escheat is distinct from succession." *In re Rapoport's Estate*, 317 Mich. 291, 301, certiorari denied,

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[10] There is printed in Appendix B, *infra*, pp. 68-71, an exchange of correspondence culminating in payment, by the Comptroller, to a Michigan Public Administrator on the account of a deceased depositer.

[11] That even such an escheat cannot be accomplished by imposing the discovery, report and penalty provisions on liquidated national banks will be shown, *infra*, pp. 53-59.

[12] The "laws of descent" of the State of Michigan which vest an estate "in the state" are referred to in Section 13456 of the Michigan escheat law. See R. 16.

sub. nom. California v. *Michigan State Board of Escheats,* 332 U.S. 764. The state asserts, in the first instance, a conservatorial interest, not a beneficial one. *Evans* v. *State Bd. of Escheats,* 307 Mich. 506, 520; cf. Mich. Stats. Ann. (1947 Cum. Supp.) Sec. 26.1053(64). Thus, the Michigan law of escheat establishes, for Michigan, custodial machinery for the administration and distribution, in a case of this sort, of dormant deposits and claims.

But it has long been held that the National Bank Act provides a complete system for the winding up of insolvent national banks, including all steps for the distribution of their effects, which embraces the entire field, to the exclusion of other law. *Deitrick* v. *Greaney,* 309 U.S. 190, 195; *Cook County National Bank* v. *United States,* 107 U.S. 445, 448; *Davis* v. *Elmira Savings Bank,* 161 U.S. 275; *Easton* v. *State of Iowa,* 188 U.S. 220. Thus, for example, in *Cook County National Bank* v. *United States, supra,* at 448, the Court said:

> We consider that act as constituting by itself a complete system for the establishment and government of national banks * * *. Everything essential to the formation of the banks, the issue, security, and redemption of their notes, the winding up of the institutions, and the distribution of their effects, are fully provided for, as in a separate code by itself, neither limited nor enlarged by other statutory provisions with respect to the settlement of demands against insolvents or their estates.

"The banking system which Congress thus established embodied a blend of governmental and private purposes." *Inland Waterways Corp.* v. *Young*, 309 U.S. 517, 522. National banks may be subject in their daily course of business to state laws relating to such matters as contracts, their acquisition and transfer of property, their right to collect debts, their right to be sued for debts, and the rights of succession to property. *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233; *McClellan* v. *Chipman*, 164 U.S. 347, 356; *National Bank* v. *Commonwealth*, 9 Wall. 353, 362. But in the administration of banks in liquidation, even in cases which related solely to the property interests of private parties, it has been held that the "question for decision is * * *, one of federal law." *American Surety Co.* v. *Bethlehem Nat. Bank*, 314 U.S. 314, 316; *Deitrick* v. *Greaney*, 309 U.S. 190, 200-201.

The federal law (12 U.S.C. 194, Appendix A, *infra*, pp. 63-64) requires the Comptroller of the Currency, and not state agencies, to distribute money paid over to him by the receiver of an insolvent national bank; ratable dividends on proved or adjudicated claims are made mandatory, and the Comptroller is directed to pay over the remainder, if any, to the bank's shareholders. The Comptroller has in the past, and continues now, to make every effort to locate those who are entitled to receive dividends awarded on proved or adjudicated

claims. What the state here seeks to do is to forestall such federal efforts, to intrude itself into the distributive scheme established by the National Bank Act.

The state may believe that its "procedure actually expedites and facilitates the liquidation by handling unclaimed dividends which cannot otherwise be disposed of under the federal procedure." Br. for appellant, p. 40. But there is another view that "It is naive beyond even requirements of the judicial office to assume that this lately manifest concern of the states over abandoned insurance proceeds [for example] reflects only solicitude for the unknown claimants." *Connecticut Ins. Co.* v. *Moore*, 333 U.S. 541, 563 (dissenting opinion). The problem of choosing between systems of distribution is Congress's, certainly not the states'. And here, Congress has conferred the power and duty to make distribution on the Comptroller of the Currency, not the Michigan Board of Escheats. Whether, all efforts at distribution having failed and the state being unable to establish its right under its laws of descent, the remaining funds should go to Michigan or to the use of the Federal Government or elsewhere is a problem this Court need not and cannot face at this time. There has been, and can be, no showing that that is the existing situation; when there is, it will be time enough to consider what disposition the National Bank Act permits, if Congress has not, by that time, made the matter so clear as to leave no question.

Appellant's reliance (Br. 38-40) on *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233, is sufficiently undermined by Judge Simons, concurring in *Rushton* v. *Schram*, 143 F. 2d 554, 561 (C.A. 6);

> It may very well be that the protective custody of the state reaches inactive bank accounts in solvent national banks. Such banks, though subject to federal regulations, are owned and operated by private corporations, and subject to state law. Where, however, custody has passed to the federal government in the exercise of constitutional and legal powers under federal law, I think the state is not empowered to interfere with it without the government's consent, clearly expressed in Congressional enactment. The distinction, it seems to me, is basic.

B. *Federal agencies cannot be subjected to regulation by the states in the performance of their official duties.*—Whether or not the Government is correct in its contention, just expounded, that the State of Michigan has no custodial right to the funds here in question, its attempt to impose on the Federal Government the discovery, report and penalty provisions of its laws (see Appendix A, *infra*, pp. 65-67, and R. 20-21, Sections 6a and 7) is independently blocked by constitutional barriers. For that reason alone, this suit must fail. To grant the declaratory judgment requested in the petition, that the Michigan escheat laws are applicable in the instant situation, is to de-

cide that officers of the United States are required to compile reports and file them with the State (R. 7-8, pars. X, XI; R. 10-12, pars. XVI-XVIII). These reports must, of necessity, be based upon books, records, and documents which are maintained in the performance of governmental functions, with respect to funds in the possession of the United States, pursuant to a federal statute regulating the liquidation of insolvent national banks. Such a judgment will also decide that the State may exercise powers of inquisition and visitation and impose penalties on the United States in the exercise of its governmental functions.[13] As previously pointed out (*supra*, pp. 41-42), such a determination may also subject a host of other federal instrumentalities like post offices, collectors of internal revenue, federal fiscal agents and others,

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[13] Compare the opinion of the Michigan Attorney General, rendered in 1912, that the Michigan legislature intended to confer no visitorial powers over national banks by enacting the Michigan escheat law. Ann. Rep't, Mich. Att'y Gen., 1913, pp. 134-135.

See also 12 U.S.C. 484, which provides: "No [national] bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized." This provision of federal law is to be contrasted with Section 6a of the Michigan law, providing in part that "The State Board of Escheats or the Attorney General shall have all the powers with respect to examination of the books and records of the depositories making such reports as are provided by the banking laws of this state with respect to examination of banks." (R. 20.)

to these requirements of Michigan law and the similar requirements of other states.

The very fact of federal regulation has led this Court to conclude, even when national banks are being operated by their private owners, "that it is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government." *Easton* v. *State of Iowa*, 188 U.S. 220, 238. Certainly, then, when the processes of liquidation have been taken over by agencies of the Federal Government because of the bank's insolvency, the activities of federal officers performing their official functions are free from state regulatory action.

Judge Simons' concurring opinion, already referred to, 143 F. 2d 554, 561, considered the problem in its proper light when he wrote—

> I think, however, that the amended Act, at least insofar as it permits the state administrator to exercise powers of visitation and inquisition, and insofar as it imposes penalties upon an agency of the federal government in possession of the assets of an insolvent national bank, operates as an unlawful interference with the liquidation of a national bank provided for in § 194, 12 U.S.C.A., of the National Banking Act.

The majority of the court "did not gainsay this" (R. 67) and, in the instant case, held that the action "constitutes an unlawful interference with the

liquidation of a national bank upon the same principles and authority fully discussed in our previous opinions" (R. 68). This decision is well supported by the multitude of decisions of this Court which hold the activities of the Federal Government immune from state regulation or other state action.

There is no power in a state to interfere with the power of the United States to carry out the operations of Government pursuant to congressional direction. The supremacy clause of the Constitution removes all state obstacles to the performance by the Federal Government of any of its functions and so modifies "every power vested in subordinate governments, as to exempt its own operations from their own influence." *McCulloch* v. *Maryland*, 4 Wheat. 316, 427. This doctrine of federal immunity, accepted in many decisions of this Court,[14] is coextensive with the scope of federal power, for every authorized activity of the United States is an exercise of its governmental power. *Graves* v. *N. Y. el rel O'Keefe*, 306 U.S. 466, 477; *Pittman* v. *Home Owners' Corp.*, 308 U.S. 21, 32; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95, 102.

This principle of federal immunity precludes the

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[14] See, *e.g.*, *Osborn* v. *United States Bank*, 9 Wheat. 738; *Thomson* v. *Pacific Railroad*, 9 Wall. 579, 590-591; *Tennessee* v. *Davis*, 100 U.S. 257, 263; *In re Neagle*, 135 U.S. 1; *Ohio* v. *Thomas*, 173 U.S. 276, 283; *Johnson* v. *Maryland*, 254 U.S. 51, 55-56; *Arizona* v. *California*, 283 U.S. 423; *Mayo* v. *United States*, 319 U.S. 441; see also, *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, 318 U.S. 261.

states from interference with the property, operations, or functions of the United States. Because the United States "may perform its functions without conforming to the police regulations of a State," it may construct a dam and reservoir in a state without securing approval of its plans and specifications by the state engineer as required by state statute (*Arizona* v. *California*, 283 U.S. 423, 451); and it may operate soldiers' homes without complying with state inspection or police regulations (*Ohio* v. *Thomas*, 173 U.S. 276).[15] So, too, the driver of a mail truck for the Post Office Department cannot be required to comply with state driving license requirements (*Johnson* v. *Maryland*, 254 U.S. 51), nor may federal agents in a national forest and game preserve be subject to the hunting restrictions of the state in which the preserve is located (*Hunt* v. *United States*, 278 U.S. 96). The United States may enforce a lien for taxes upon real estate under the internal revenue laws without complying with state law requiring recordation and timely enforcement (*United States* v. *Snyder*, 149 U.S. 210); and a claim of the Government against a decedent's estate will not be barred by

[15] "Whatever jurisdiction the State may have over the place or ground where the institution is located, it can have none to interfere with the provision made by Congress for furnishing food to the inmates of the home, nor has it power to prohibit or regulate the furnishing of any article of food which is approved by the officers of the home, by the board of managers and by Congress. Under such circumstances the police power of the State has no application." *Ohio* v. *Thomas*, 173 U.S. 276, 283.

failure to file within the time required by state law. *United States* v. *Summerlin*, 310 U.S. 414. The United States may distribute fertilizer to consumers in Florida without complying with a state inspection act. *Mayo* v. *United States*, 319 U.S. 441.

The numerous cases dealing with state attempts to tax the Federal Government, its property, and its functions also establish conclusively that the states may not regulate the activities of the United States. The decisions involving a tax upon the United States, its instrumentalities, property or functions are marked by a consistent uniformity in holding that the National Government cannot be taxed by a state or local government in the absence of congressional consent. Its sovereign immunity has been given effect whether the tax was levied directly upon property owned by the United States[16]

[16] State or local taxes may not be laid upon such federally owned property as public lands prior to patent or passage of equitable title to private persons (*Colorado Company* v. *Commissioners*, 95 U.S. 259; *Northern Pacific R. R. Co.* v. *Traill County*, 115 U.S. 600; *Wisconsin Railroad Co.* v. *Price County*, 133 U.S. 496, 504; *Irwin* v. *Wright*, 258 U.S. 219), lands held in trust for Indians (*United States* v. *Rickert*, 188 U.S. 432), and even land acquired by the United States to enforce the payment of taxes (*Van Brocklin* v. *State of Tennessee*, 117 U.S. 151). Nor may lands sold by the United States to a private purchaser be re-assessed for the period of federal ownership (*Lee* v. *Osceola Imp. Dist.*, 268 U.S. 643).

or one of its instrumentalities,[17] or was imposed upon a transaction engaged in by the Government or its instrumentality.[18] These cases clearly demonstrate that the states cannot control or restrict the United States in the performance of a federal function.

The conclusion to be derived from this wealth of decisions is that "the activities of the Federal Government are free from regulation by any state" and "where, as here, the governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation, the inherent freedom continues." *Mayo v. United States*, 319 U.S. 441, 445, 448. Clearly, the many agencies of the United States which hold funds of private individuals are not required to submit to the report, penalty, and investigation provisions of the Michigan statute in the absence of an unambiguous direction from Congress to do so. Here Congress has not only not so directed, but the

[17] *Clallam County* v. *United States*, 263 U.S. 341, 344 (property of wholly-owned Government corporations); *New Brunswick* v. *United States*, 276 U.S. 547 (equitable interest of wholly-owned Government corporation).

[18] The recording of a mortgage by the United States is not subject to state tax. See *Educational Films Corp.* v. *Ward*, 282 U.S. 379, 389; cf. *Federal Land Bank* v. *Crosland*, 261 U.S. 374; *James* v. *Dravo Contracting Co.*, 302 U.S. 134, 149, 150; *Graves* v. *N. Y. ex. rel. O'Keefe*, 306 U.S. 466, 477. Equally immune are transactions of a federal instrumentality such as a national bank. *Osborn* v. *United States Bank*, 9 Wheat. 738; *McCulloch* v. *Maryland*, 4 Wheat. 316.

Comptroller of the Currency plainly has the right to refuse to divulge the reports and records here sought by the appellant. *Boske* v. *Comingore*, 177 U.S. 459; *Bank of America Nat. Trust & Sav. Ass'n* v. *Douglas*, 105 F. 2d 100, 103, 106 (C.A. D.C.)

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the appeal should be dismissed or the judgment below affirmed.

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October, 1949.

APPENDIX A.

28 U.S.C. 1254 provides as follows:

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

* * * * * * * *

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented.

* * * * * * * *

Pertinent federal statutory provisions are as follows:

12 U.S.C. 1. Bureau of Comptroller of the Currency.

There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds and, under the general supervision of the Board of Governors of the Federal Reserve System, of all Federal Reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency, and shall perform his duties under the general directions of the Secretary of the Treasury.

12 U.S.C. 2. Comptroller of the Currency; appointment; term; salary.

The Comptroller of the Currency shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office for a term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate; and he shall receive a salary at the rate of $15,000 a year.

12 U.S.C. 191. General grounds for appointment of receiver.

Whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in section 93 of this title, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, in either case, appoint a receiver who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in section 192 of this title.

12 U.S.C. 192. Default in payment of circulating notes.

On becoming satisfied, as specified in sections 131 and 132 of this title, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings.

Provided, That the comptroller may, if he deems proper, deposit any of the money or so made in any regular Government depositary, or in any State or national bank either of the city or town in which the insolvent bank was located or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United

States bonds or other satisfactory securities with the Treasurer of the United States for the safekeeping and prompt payment of the money so deposited: *Provided,* That no security in the form of deposit of United States bonds, or otherwise, shall be required in the case of such parts of the deposits as are insured under section 264 of this title. Such depositary shall pay upon such money interest at such rate as the comptrolled may prescribe, not less, however, than 2 per centum per annum upon the average monthly amount of such deposits.

12 U.S.C. 193. Notice to present claims.

The comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same, and to make legal proof thereof.

12 U.S.C. 194. Dividends on adjusted claims; distribution of assets.

From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of

the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held.

The provisions of the Michigan Escheat Act, as amended Michigan Comp. Laws, 1929 (Mason's 1945 Supp.), are as follows:

13458-2. Definitions. Sec. 4b. The words "person" or "persons" as used in this act shall be understood and interpreted to mean and include a natural person, a copartnership, a company, an association, a bank, a trust company, a corporation, except municipal corporations, or any officer thereof, any governmental department, agency, instrumentality or official, a depository, a receiver, a trustee, a fiduciary, a debtor, a custodian, a liquidating officer, or any combination of natural persons.

The words "depositor" or "depositors" as used in this act shall be understood and interpreted to mean and include any person, or persons, as above defined, who or which is the legal or equitable owner or creditor entitled to the possession of any property, real, personal or mixed, including liquidated choses in action, which is in the possession or under the control of any other person, as above defined, who or which is indebted or accountable for any such property to such depositor.

The word "deposit" as used in this act shall be understood and interpreted to mean and include money, credits, securities, liquidated choses in action and property of any kind or nature.

The word "depository" as used in this act shall be understood and interpreted to mean and include any person, as above defined, who or which has in his or its possession or under its control any property, real, personal or mixed, including liquidated choses in action, for which he or it is indebted or accountable to any other person as depositor.

The word "escheated" as used in this act shall be understood and interpreted to refer to and included all property of whatever nature, the title to which has accrued and vested in the state by operation of any statute of this state, by reason of there being no known heirs, devisees, legatees or assignees of the last known owner.

The word "escheatable" as used in this act shall be understood to refer to and include all property of whatever kind or nature, including liquidated choses in action, over which the state has power to assume control by appropriate proceedings, by reason of its having lain dormant, unclaimed, uncalled for or abandoned as in this act provided.

* * *

13460. Same: Report by Holder to State Board of Escheats; Contents; Signature sworn to; Perjury. Sec. 6. On the thirtieth day of June in every year after the taking effect of this act, it shall be the duty of each person within this state, who or which as a depository is indebted or accountable to any other person for money, credits, securities or property of any kind to make a report as hereinafter provided.

Such report shall be made to the State Board of Escheats and shall contain a truthful statement, in detail of the following matters, viz.: First, The name of the depositor, or the name of the person in whose name any such deposit, or deposits, of any kind is held by any such person, or depository, where no dealings or transactions have been had between the depositor and the depository with respect to any money, credits, securities or property of any kind for a period of 7 years or more: Provided, however, That notice in writing to the depository by the depositor, his heirs, representatives or assigns, to keep the deposit alive, shall be construed as a transaction within the meaning of this subsection;

Second, The date of such deposit or deposits, by the depositor with the depository, or credit or credits by the depository to the depositor and whether they are in money, securities or other property, and if not in money, the nature of the same;

Third, Any interest due on such deposits, money, securities, credits or other property, if any, and the amount thereof;

Fourth, The sum total of such deposit, deposits, money, securities, credits or other property, together with interest added thereto;

Fifth, Such report, itemized as aforesaid, shall be signed by the natural person making the same and shall be sworn to before a natural person competent to administer oaths as a full, complete and truthful statement of

each of the items therein contained. If such report is made for and on behalf of a copartnership, company or association, such report may be signed and sworn to by any member of such copartnership, company or association or some person duly authorized who has knowledge of the facts. If such report is made for and on behalf of a corporation, private or municipal, such report shall be signed and sworn to by the president, vice-president, or treasurer of such corporation, and such signing and swearing to such reports shall appear to be for and on behalf of such corporation.

After the making, signing and swearing to such report as herein provided, the same shall be filed in the office of the State Board of Escheats of the state of Michigan and it shall be the duty of the secretary of said Board of Escheats to endorse or cause to be endorsed thereon the time at which such report was received and filed, which endorsement shall be signed by such secretary or some person legally competent to sign the same, and thereafter such report shall be and remain a part of the official records of the office of the State Board of Escheats.

If any false statement in such report is signed and willfully sworn to, it shall be deemed perjury on the part of the person signing and swearing to the same, and such person shall be liable to be proceeded against and punished as in other cases of perjury.

APPENDIX B.

LAW OFFICES
KELLY, KELLY & KELLY
2372 NATIONAL BANK BUILDING
DETROIT, MICHIGAN

August 15, 1946

Mr. B. C. Schram, Receiver,
First National Bank,
Fort Street,
Detroit, Michigan

In re: Estate John H. Laichinger, dec.
Attention: Mr. Regner

Dear Sir:

The writer is one of the Public Administrators for Wayne County and as such was appointed administor de bonis non of the above entitled estate.

I am advised that you have approximately $250.00 in the closed bank of the First National Bank of Detroit belonging to the above mentioned deceased. Find enclosed copy of letters of administration. Kindly forward whatever amount that is due the estate at your convenience.

Yours very truly,

By (s) L. E. KELLY,
Administrator.

TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY

October 16, 1946.

Kelly, Kelly & Kelly,
Attorneys at Law,
2372 National Bank Building,
Detroit 26, Michigan.
Attention: Mr. L. E. Kelly.

In reply, please refer to: DD-27
Claim No. 30-10932
First National Bank—Detroit
Detroit, Michigan.

Gentlemen:

Your Ref: Estate John H. Laichinger, deceased

Receipt is acknowledged of your letter of August 15, 1946 addressed to Mr. B. C. Schram, Receiver, First National Bank, Fort Street, Detroit, Michigan, and to the reply of the Detroit Representative of this office dated August 19, 1946, concerning your appointment as administrator de bonis non in the matter of the Estate of John H. Laichinger, deceased. With your letter you enclosed a certified copy of your letters of administration.

We hold in our files checks in payment of the fourth, fifth, and sixth (final) interest dividends on Claim No. 30-10932, drawn to the order of John H. Laichinger or Margaret Laichinger, in the aggregate amount of $257.89. Before making payment of these dividends, it is desired that we be

furnished with certified copies of the death certificates of the claimants.

Very truly yours,

(s) G. W. GARWOOD,
Supervising Receiver,
Division of Insolvent National Banks.

TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY

November 21, 1946.

Kelly, Kelly & Kelly,
2372 National Bank Building,
Detroit 26, Michigan.

Reference: Est. John H.
Laichinger, dec.

Attention Mr. L. E. Kelly.

In reply, please refer to: DD-27
Claim No. 30-10932
First National Bank—Detroit
Detroit, Michigan.

Gentlemen:

The enclosed checks, listed below, are forwarded you in payment of dividends on the claim mentioned above.

Check Number	Dividend	Amount
U.D. Q-270,256	Fourth	$ 68.65
U.D. Q-270,257	Fifth	137.31
U.D. Q-270,258	Sixth (final)	51.93
	Interest	

Payee:

Lawrence Kelly, a Public Administrator, de bonis non of the estate of John H. Laichinger, deceased.

Very truly yours,

(s) G. W. GARWOOD,
Supervising Receiver,
Division of Insolvent National Banks.

Enclosures (3)

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